

TO:  
FROM:

This letter forwards our response to comments from the Office of Personnel Management on a proposal by CIA to amend the Central Intelligence Agency Retirement and Disability Act to allow certain CIA employees to elect coverage under the FERS system within six months after being designated a participant in the CIA Retirement and Disability System.

As we read the OPM comments, we understand that OPM has no objection to our basic proposal to allow newly designated CIARDS participants an opportunity to elect coverage under FERS. (See paragraph 4 of the OPM response: "We would have no objection to a provision that would simply allow these individuals to transfer to FERS upon being designated under section 203 [of the CIA Retirement Act]"). OPM's other comments address the choice of existing legislation to be amended, or concern issues that appear to arise solely out of a misunderstanding of our initial proposal.

Our proposal is limited to allowing an employee who has been designated as a participant in the Central Intelligence Agency Retirement and Disability System an opportunity to elect coverage under FERS. Contrary to OPM's interpretation of our proposal, we do not intend to

"allow a CSRS employee who elected to transfer to FERS . . . . to revoke his or her FERS election and become subject to CIARDS instead."

The proposed statutory language would only permit an employee to "elect to become subject to Chapter 84 of title 5, United States Code" (the codification of the FERS Act). The narrative explanation of the proposed legislation clearly states our intent

"to permit newly designated CIARDS participants to elect to join the Federal Employees Retirement System."

Nonetheless, if our intent appears ambiguous, we would have no objection to inserting the following additional language in the narrative description:

This election is limited to electing to join FERS.

The legislation is not intended to permit an

employee to transfer from FERS to CIARDS or CSRS.

OPM next raises some concern over language in our draft which would authorize a FERS election

"notwithstanding the provisions of section 301(c) of the FERS Act of 1986 and any prior elections made pursuant to that section."

This language was intended to address our concern that a decision to remain in CSRS could be deemed an irrevocable "election" under section 301(c) of the FERS Act. We believe that good draftsmanship dictates that the irrevocability of a prior decision to remain in CSRS should be referenced in the new legislation. However, we suggest the alternative language for consideration:

"Notwithstanding any previous election to remain  
subject to the Civil Service Retirement System,  
an employee who has been designated as a participant  
. . . ."

Finally, we continue to believe that it is most appropriate to posture the legislation as amendments to the CIA Retirement Act rather than as amendments to the FERS Act. The proposed legislation is of limited scope - limited to individuals who have been designated as CIARDS participants. Accordingly, the statutory revisions should be made to and codified with the statutes defining the benefits under the CIA Retirement and Disability System. Placing the amendments under the CIA Retirement Act would also insure that the draft legislation is initially reviewed by the committees having responsibility for oversight of the CIA Retirement and Disability System, where the proposal could receive a proper narrowly focused review.

I appreciate the opportunity to clarify our position and to respond to OPM's concerns. As I said previously, I believe that both agencies are in fundamental agreement and I trust that the modifications proposed in this letter will resolve any remaining OPM concerns.